IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17896 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAUDHARI CHIRAG BABUBHAI
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance :
MR NP CHAUDHARY for the Petitioner
Mr Neeraj Soni, Assistant Government Pleader for Respondent No.1
NOTICE SERVED BY DS for Respondent(s) : 2,
MR Hemang Raval for Mr AD OZA for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 03/09/2007

ORAL JUDGMENT

Rule. Mr Hemang Raval for Mr AD Oza, learned advocate waives service of Rule for respondent No.3. Mr Neeraj Soni, learned Assistant Government Pleader waives service of Rule for respondent No.1. At the request of the learned counsel for the parties the matter is taken up for final hearing today.

The petitioner has filed this petition in view of the fact that respondent No.2 has declined to carry out the correction in the School Leaving Certificate on the ground that the petitioner had already left the School and, therefore, it was not possible to effect any change in the Certificate. It is the say of the petitioner that in the Certificate his caste is shown as Hindu Kadva Patidar instead of Hindu Chaudhary.

I have heard N.P. Chaudhary, learned advocate for the petitioner, Mr Neeraj Soni, learned Assistant Government Pleader for respondent No.1 and Mr Hemang Raval for Mr AD Oza, learned advocate for respondent No.3. Respondent No.2 though served, is not present. It is however stated by Mr Chaudhary that the representative of respondent No.2 is present in the Court.

Mr Chaudhary has drawn my attention to the decision of this Court rendered in the case of Thakore Nilesh v. Gujarat Secondary Education Board and others dated 27.4.2007 passed in Special Civil Application No.21036 of 2006 wherein this Court has observed as under:-

> “..... He has, therefore, approached this Court. The entire issue is based on facts. Whether the petitioner is Christian or Hindu

Thakore can be determined or decided or ascertained only upon detailed inquiry being made by some authority on the basis of various documents and if necessary, even by recording oral statement or the affidavit. This Court under Article 226 of the Constitution of India cannot make such inquiry. As already stated above, there is no provision in the Regulation to effect any change in the school leaving certificate except change relating to the birth date, after the pupil has left the school, but that should not make the genuine person suffer unnecessarily. Considering the provisions referred to above, this Court can always direct the sub-ordinate Court in the State to make necessary inquiry and issue proper certificate in accordance with the findings arrived at after the inquiry. In the background of the provisions stated above, it also appears that the learned Judicial Magistrate of the area can be the proper authority to make such inquiry and issue certificate to the concerned student. The procedure which is being followed for correction of the birth date in the school record after the pupil has left the school can be also be applied or followed in other matters such as change in the name, caste/religion, place of birth etc.

5.1. This Court can certainly exercise its power under writ jurisdiction, and direct the Magistrate to make inquiry, but it is desirable that the Government at its level, can suitably bring amendment to the Regulations and along with the birth date in Clause 6 of Regulation 12(A) include other incidental matters also.

> 6. In view of the aforesaid, the petitioner is directed to file necessary application along with all the relevant documents before the concerned Judicial Magistrate, First Class, on or before 31st August, 2007 and upon receiving such application, the learned Magistrate shall make detailed inquiry to ascertain the correct religion of the petitioner and accordingly issue certificate as early as possible and preferably within two month from the date of the application.

In view of the aforesaid observations of this Court, the learned advocate for the petitioner states that similar directions may be issued in the present case. Mr Neeraj Soni and Mr Raval have no objection. In view of the same the following direction is given:

The petitioner is directed to file necessary application along with all the relevant documents before the concerned Judicial Magistrate First Class on or before 30th September 2007 and upon receiving such application the learned Magistrate shall make detailed enquiry to ascertain the correct caste of the petitioner and accordingly issue certificate as early as possible and preferably within two months from the date of the application.

With the aforesaid directions, this petition is disposed of. Rule is made absolute.

(Akshay H Mehta, J.)

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